IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9273 OF 2004

Vijay M. Swamy ... Petitioner
V/s.
Samiulla M. Khan ... Respondent

Mr.Rajesh Yadav for Petitioner
Mr.A.R. Mishra for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**
DATED: **AUGUST 9, 2005**

P.C.:

. The Petition is directed against the order of the Small Causes Court dated 7.7.2004. By this order, the trial Court has held, by relying on two judgments of this Court, that it was left with no discretion to permit the defendant to file his written statement beyond the period of 90 days. This finding of the trial Court cannot be accepted in view of the decisions of this Court in *Prabhakar Madhavrao Mule v/s. Bhagwan Mitharam Choudhari*, **2004 (2) Mh.L.J. 1058** and in *Iridium India Telecom Ltd. Bombay v/s. Motorola Inc.,* **2001(1) Mh.L.J. 532.** This Court in a judgment reported in **2004(4) Mh.L.J. 739** has held that the trial Court may extend the period for filing the written statement if the defendant shows sufficient cause for the delay in not being able to file his written statement within the statutory period of 90 days.

2. In the present case, the defendant has indicated in his application that he received the summons for

filing the written statement on 29.11.2003 and the matter appeared for filing written statement on 12.1.2004. The matter was then adjourned to 11.2.2004 on which date the advocate appeared for filed his Vakalatnama. It was thereafter adjourned to 15.3.2004 when his advocate could not remain present to file the written statement. It is on this date that the trial Court set the matter for ex-parte orders, despite the Petitioner's request for an adjournment.

3. The Petitioner has stated that he is an illiterate person and obviously he has suffered on account of the negligence of his advocate. In my view, the Petitioner has made out sufficient cause for being unable to file the written statement within the stipulated time. Therefore, the delay is not unpardonable.

4. The trial Court's order is set aside. The Petitioner shall file his written statement within two weeks from today. If the written statement is not filed as stipulated within two weeks, the matter to proceed for cross-examination of the plaintiff's witnesses. The amount of Rs.3,500/- which has already been deposited in this Court shall be paid over to the respondent. Petition is, accordingly, disposed off.

5. In view of the fact that the Plaintiff is 75 years old, the hearing of the suit is expedited.